

PATENT



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Daniel P. Topp
TITLE : COMBUSTION SYSTEM FOR A HEATER
APPLN. NO. : 09/852,445
FILING DATE : May 9, 2001
EXAMINER : K. Ferko
ART UNIT : 3743

TO: Assistant Commissioner for Patents
Washington, D.C. 20231

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RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated February 6, 2002. The Office Action set a shortened statutory period for response that expired on March 6, 2002. Accordingly, enclosed is a Petition for Extension of Time, along with the appropriate extension fee, to extend the period for response to today's date.

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I. SUMMARY OF OFFICE ACTION

The Office Action consists of a requirement for restriction under 35 U.S.C. § 121.

The Examiner has divided the claims in the present application as follows:

Group I – claims 1-11, drawn to a combustion system, classified in Class 126, subclass 110C; and

Group II – claims 12-18, drawn to a gas heater system, classified in Class 431, subclass 354.

The Examiner required restriction on the basis that the inventions are distinct, each from the other.

II. APPLICANT'S RESPONSE

The Examiner's requirement for restriction is traversed. It is submitted respectfully that the Examiner's requirement is deficient on its face because 35 U.S.C. § 121 requires that the involved inventions be *independent* and distinct. The inventions defined in Groups I and II are not independent in that the combustion system of claims 1-11 can clearly be used in the gas heater system of claims 12-18. In fact, the preamble of independent claim 1 expressly states, "A combustion system for use in a gas burning heater." Accordingly, the inventions are not independent.

The Examiner has not characterized the inventions of the claimed groups as independent nor has she provided arguments to indicate that the inventions are independent and, thus, has apparently recognized that the claims do not define independent inventions. Therefore, the Examiner has not met the dual statutory requirements of independence and distinctiveness.

In view of the above, Applicant respectfully requests that the Examiner withdraw her requirement for restriction.

Furthermore, there is no extra burden on the Examiner because of the similarity in claims 1-11 versus claims 12-18. In other words, regardless of which Group of claims Applicant selects, the Examiner must still search both class 126 and class 431. Therefore, the Examiner should examine both Groups of claims on their merits in a single patent application.

III. CONCLUSION

Applicant elects provisionally to prosecute the claims of Group I, that is claims 1-11.

If the Examiner does not withdraw the restriction requirement, Applicant cancels without prejudice claims 12-18. Further, Applicant reserves the right to pursue, in a divisional and/or continuation application, claims that are the same or of similar scope as those in Group II, that is claims 12-18.

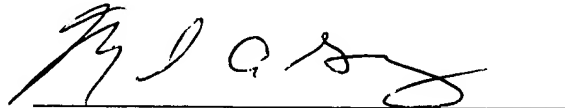
It is Applicant's understanding that this election is being made to aid the Examiner in conducting a search and examination of the claimed subject matter, and is not to be construed as limiting the scope of Applicant's claims. It is also Applicant's understanding that, if the elected subject matter is found to be allowable over the prior art, the search and examination will be expanded to cover other species, until it includes the full scope of the generic claims included in the elected group.

A self-addressed, postage pre-paid, post card for the PTO to date stamp in order to acknowledge receipt of this communication is enclosed.

Applicant respectfully requests reconsideration of this application, reconsideration of the requirement for restriction, and the early issuance of a favorable action on the merits.

Respectfully submitted,

Date: 3 APRIL 2002



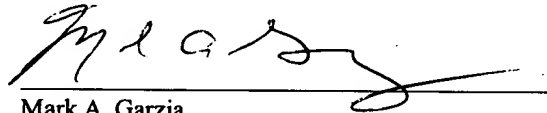
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CERTIFICATE OF MAILING

I hereby certify that this Response to Restriction Requirement, along with any paper or fee indicated as being enclosed, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, and addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on April 3, 2002.

Date: 3 APRIL 2002



Mark A. Garzia